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Your Ref: ADVOCATE NKEBE KANYANE/7/2-016961/16

11-10-2016

**BY HAND**

**Public Protector South Africa**  
**Attention: Advocate Thuli Madonsela**  
**175 Lunnon Street**  
**Hillcrest Office Park**  
**Pretoria**

**CC: Advocate Nkebe Kanyane**  
**[Nkebek@pprotect.org](mailto:Nkebek@pprotect.org)**

**CC: Mr Frans Lekubo**  
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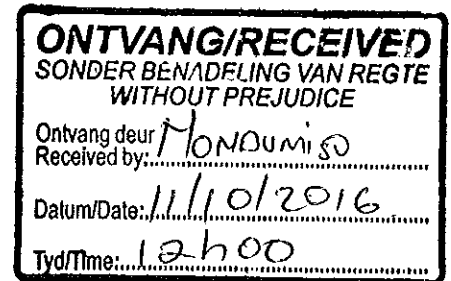
**CC: Mr Inben Naidoo**  
**[InbenN@pprotect.org](mailto:InbenN@pprotect.org)**

Dear Advocate Madonsela, Advocate Kanyane and others,

**INVESTIGATION INTO IMPROPER AND UNETHICAL CONDUCT  
BY THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND  
OFFICIALS OF STATE ORGANS REGARDING THEIR ALLEGED  
INAPPROPRIATE RELATIONSHIP WITH MEMBERS OF THE  
GUPTA FAMILY: MR AJAY GUPTA**

I have persistently indicated to your offices over the past few weeks that I am concerned about the fact that you have decided to side-line the Gupta family and witnesses in support of their version from your investigation and your report.

You are aware of the fact that you chose not to subpoena anyone of the three Gupta brothers to give evidence despite the fact that you intend to conclude a report which will in all likelihood have severe conclusions contained therein.



I approached your offices with correspondence and tendered the assistance and evidence of the Gupta brothers and it was on my initiative that Mr Ajay Gupta gave evidence on 4 October 2016 for several hours. Your Advocate Madonsela appeared agitated and irritated with our client and it is on record that I objected against various irregularities during these proceedings including my discomfort with your refusal to listen to the answers given by Mr Gupta whilst you had your eye on the clock in order to ensure your attendance at the media conference which was scheduled for 14h00. This is all on record and I have requested you to give us a transcribed version of the evidence of Mr Gupta, same still outstanding.

You have been aware of the fact that Mr Gupta would be out of the country from 6 October 2016 for approximately 10(ten) days and despite the fact that I have insisted on your offices giving me the information I require to respond in detail to certain allegations the information was not given to me timeously and those facts are common cause and contained in correspondence I have sent you over the past few days.

I have indicated on numerous occasions that I would like to have the opportunity to address the witnesses who gave evidence before you and I insisted to be afforded the opportunity to exercise my client's rights for which provision is clearly made in the Public Protector Act, 1994.

You have brushed my correspondence off and did not even respond thereto.

I have warned constantly against your approach and the processes followed, all in vain just to be advised earlier this morning that you will issue your report on Friday.

It is obvious that you had a pre-determined view of how your report should look and I submit that the evidence you have gathered was gathered as window-dressing for your decision that you have taken before my clients' version could be heard or your version could be tested. You seem to ignore the Act responsible for your very existence and it leaves me flabbergasted.

I have considered launching an interdict application on an urgent basis but since the exact adverse conclusions you intend to make are only speculation at this point in time I do not want to put my client at risk and thereby create a fresh media hype which will in all likelihood be interpreted as an attempt to "*threaten or intimidate*" your offices.

I have, therefore, decided to advise my clients to wait for your report which will be issued on Friday and to consider the contents thereof. If you choose to conclude that my clients were in any way whatsoever involved in inappropriate conduct under circumstances where we have tendered evidence to the contrary and under circumstances where we had a clear right to contradict the evidence you have gathered **you do so at your own peril and at your own risk.** It is then, at this point in time, necessary to take cognisance of the provisions of Section 5 of the Public Protector Act which we, for the record, quote:

*"Neither a member of the office of the Public Protector nor the office of the Public Protector shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed **in good faith** and submitted to Parliament or made known in terms of this Act or the Constitution."*

I submit that a forced report with adverse conclusions under these circumstances **will not be a report, finding, point of view or recommendation expressed in good faith.** It will, on the contrary, be an effort to force your views and it is obvious that you show distrust in your successor under these circumstances. It begs the question whether you leave a well-respected office with ill-intent and with a last punch at your rival (in my view), the President.

Please be guided accordingly and be aware of the fact that all my clients' rights remain strictly reserved.

Kind regards.

  
**Gert van der Merwe**  
**VAN DER MERWE & ASSOCIATES**